# Memorandum of Understanding (MOU)

Skokomish Indian Tribe

And

Mason County Public Transportation Benefit Area

Governed by the Mason Transit Authority Board (MTA)

2014-2015

# Memorandum of Understanding between the Skokomish Indian Tribe and Mason County Public Transportation Benefit Area (MTA)


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## Introduction

The Skokomish Indian Tribe, an Indian tribe recognized as such by the federal government, and Mason County Public Transportation Benefit Area governed by the Mason Transit Authority Board (MTA), a Washington municipal corporation organized under Chapter 36.57A RCW, hereby enter into agreements with one another for joint or cooperative action pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW to provide additional public transit services to Tribal Members and the general public in Mason County utilizing Federal Tribal Transit Program ("FTTP") funds.

## Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish a mutually agreeable framework for cooperatively addressing Tribal/public transit needs. Moreover, it will set forth the roles and responsibilities of Skokomish Indian Tribe, as the recipient of FTTP funds, and MTA, as a contractor, in providing the specific services anticipated by the grant. Hereafter referred to as the "Project," the parties intend to use the funds to expand public transit services in Mason County by adding one new trip with four trips Mondays through Saturdays in areas heavily used by tribal members. The buses will be maintained and operation of the routes will be carried out by MTA.

## Methods of Cooperation

Each party to this MOU is a separate organization responsible for establishing its own policies and procedures, except where specifically discussed in this Memorandum.

## Term

The term of this MOU will commence April 30, 2014,and conclude April 30, 2015. The term may be extended by mutual agreement of the parties, which must be executed in writing upon 60 days' notice of proposed extension.

## COMPENSATION

The Skokomish Indian Tribe will compensate MTA for such routes on a fixed hourly rate of $64.00 for each service hour of such transportation under this MOU. The fixed hourly rate may be adjusted as mutually agreed by both parties if fuel costs increase or decrease beyond five percent (5%) over or under the current average rate of $3.28 per gallon based on the price average for all of 2012. The amount of total compensation will not exceed the amount indicated in Exhibit A unless by mutual agreement of both parties.

This agreement shall terminate on the specified date of expiration April 30, 2015 or the exhaustion of funding specified in this agreement, unless authorized by the Tribe to continue service after the exhaustion of said funding.

In either event, the Tribe shall notify MTA in writing, sixty (60) days prior to the date of termination, indicating whether the Tribe desires that MTA continue to perform the project pursuant to the terms of the agreement, and if so, through what date.

## Rights, Roles, and Responsibilities

### Obligations of Skokomish Indian Tribe

As a federal funding recipient, Skokomish Indian Tribe is responsible for carrying out the project described in its FTA Tribal Transit Grant application. Skokomish Indian Tribe will provide contract oversight, planning and coordination with MTA.

1. Skokomish Indian Tribe will establish requirements for periodic financial reports, no more than quarterly, on Skokomish-funded services from MTA or at intervals as required by funding agencies and as mutually agreeable to each party.

2. Skokomish Indian Tribe will also establish requirements for periodic operational reports, no more than quarterly, on Skokomish-funded services from MTA that include trips provided, estimated number of passengers served, and similar information necessary to show the utility and value of the Project.

3. Skokomish Indian Tribe will gather reports from MTA as required and will report to funding agencies as required by those agencies.

4. Skokomish Indian Tribe will ensure that all applicable federal laws and regulations are complied with, and that all federal directives affecting Project implementation are followed. Skokomish Indian Tribe may, at its discretion, amend this agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of service or schedule or, the activities to be undertaken as part of this agreement, such modification will be incorporated only by written amendment signed by both Skokomish Indian Tribe and MTA. If MTA objects to any such changes, MTA may terminate this agreement upon 60 days' written notice to Skokomish Indian Tribe.

5. Skokomish Indian Tribe will provide funding as set forth in Exhibit A for the services described below and in Exhibit B from funds made available to the Tribe for this purpose from federal and state sources. Currently these sources consist of a Tribal Transit grant by the Federal Transit Administration.

6. Skokomish Indian Tribe will pay MTA during the Project in the following manner: At a mutually agreed upon schedule, MTA will submit an Invoice for services provided during the preceding billing period. Upon receipt of the invoice, Skokomish Indian Tribe will request funds through the FTA Electronic Clearinghouse Operation (ECHO) system, and will disburse those funds to MTA.

**Obligations of MTA**

1. Mason Transit Authority, assub-recipient, will operate and maintain the vehicles used to provide the services covered by this Memorandum in accordance with its own policies and procedures.

2. Mason Transit Authority, as sub-recipient, will provide the specific services outlined in this Memorandum during the term of this MOU. Should available funding levels change; these services will be expanded or curtailed based on written agreement of the two parties.

3. Mason Transit Authority, as sub-recipient, will provide periodic financial reports to Skokomish Indian Tribe through its designated staff representative. MTA, as sub-recipient, will provide periodic operational reports to Skokomish Indian Tribe on Skokomish-funded services that include trips provided, estimated number of passengers served, and similar information necessary to show the utility and value of the project.

4. In carrying out the services covered by this Memorandum, MTA, as sub-recipient, will act in accordance with the applicable standards described in the certifications and assurances attached as Exhibit C. MTA will comply with applicable Federal laws and regulations, including those listed at Exhibit C. Federal laws, regulations, and directives may change; where applicable, such changed requirements will apply to the Project.

## General Terms

A. **Termination:** This agreement may be terminated by mutual consent of both parties, or by either party upon 60 days' notice in writing.

B. **No Third Party Beneficiaries:** Skokomish Indian Tribe and MTA are the only parties to this MOU and are the only parties entitled to enforce its terms. Nothing in this MOU gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the MOU.

C. **Mutual - Indemnification:** Each Party assumes all liability for injury or damage to persons or property arising from the act or negligence of its own employees, agents, members of governing bodies, or contractors. To the extent permitted by law, each Party shall indemnify, defend and hold all other Party harmless from any Liability arising from such act or negligence to the extent caused by the indemnifying

party's act or negligence. Any Party seeking indemnification (the "Indemnified Party") under this provision shall give reasonable notice to the Party from whom it seeks indemnification (the "Indemnifying Party") in writing of any such Liability, permit the Indemnifying Party to assume the defense and settlement of any such claim or threatened claim, and reasonably assist the Indemnifying Party, at the Indemnifying Party's cost and expense, in investigating and defending against the Liability. In the event of any claim against any Party by any employee of another Party, the indemnification and hold harmless obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Party employing the claimant under workers compensation acts, disability benefit acts, or other employee benefit acts; and the Party employing the claimant hereby specifically and expressly waives the immunity of the Party employing the claimant under such acts, and agrees that the foregoing waiver was mutually negotiated by the Parties; provided, however, that this waiver of immunity by the provisions of this section extends only to claims against a Party by or on behalf of the employee of another Party under or pursuant to this Agreement, and does not include, or extend to, any claims by the employees of any Party directly against that Party. In the case of joint or concurrent Liability, each Party shall be responsible for its share of the Liability.

D. **Informal Dispute Resolution:** The undersigned representatives of each party hereby affirm that they have entered into this Agreement in good faith. Each party agrees that it will discharge its obligations under this Agreement in good faith. The parties agree that they will work together and will endeavor to accomplish the purposes and goals of this Agreement in a manner that serves the best interests of Mason County, the Skokomish Indian Tribe and the members of those communities. In the event of any dispute or disagreement in the implementation of this Memorandum of Understanding, both parties shall resolve the matter amicably by consultation or negotiation in the spirit of cordiality and mutual respect, beginning with the designated representatives of each organization. If a dispute is not resolved within five business days of an issue being formally raised by the parties, the dispute will be referred by the representatives to the Tribal Planner and Mason Transit Authority's Development Manager, who will endeavor in good faith to agree upon a resolution of the dispute. If the matter is not resolved through negotiations at the supervisory level, the dispute will be referred to the Skokomish Indian Tribe Chief Executive Officerand the Mason Transit Authority General Manager. Final resolution of disputes may be referred for the joint consideration and negotiation of the Skokomish Indian Tribe Tribal Council and Mason Transit Authority Board.

E. **Formal Dispute Resolution: Arbitration.**

1. All claims, disputes and other controversies arising out of or relating to this Agreement not resolved by Informal Dispute Resolution shall be subject to arbitration as provided in this section. The arbitrators shall equitable have the authority to order injunctive relief or specific performance. All arbitration proceedings shall be conducted by a board of arbitrators composed of three persons.

2. In the event of an arbitration one arbitrator shall be appointed by the Skokomish Indian Tribe and one arbitrator shall be appointed by MTA and the third arbitrator shall be appointed by the other two arbitrators.

The Skokomish Indian Tribe and MTA shall have 15 days from the institution of the arbitration to make their appointments.

3. The arbitration shall be conducted under rules as may be determined by the arbitrators; provided, however, that both Parties shall be afforded discovery consistent with the Federal Rules of Civil Procedure; and, provided further, if the arbitrators do not unanimously agree on the rules governing the arbitration, the arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The board so designated shall conduct a hearing within 30 days of completion of any discovery, and within 15 days after the hearing (unless such time is extended by agreement of the Parties) shall notify the Parties of their decision in writing, stating the reasons therefore and separately listing their findings of fact, conclusions of law and order. Insofar as the Parties may legally do so, they agree to abide by the decision of the board. All factual determinations made by the board shall be conclusive and binding on the Parties and shall only be subject to judicial review as permitted under Washington law.

4. Pending the final resolution of any dispute, the Parties shall proceed diligently with the performance of their respective services and other duties and obligations under this Agreement without diminution of effort.

G. **Limitations:** Except as otherwise expressly identified in this agreement, no signatory is authorized by any other signatory under this agreement to act on behalf of another signatory; and no signatory shall have the authority to bind another signatory in contract, debt or otherwise. The signatories are and shall remain separate entities, and no partnership, joint venture, or agency relationship shall be created under this agreement.

H. **Force Majeure:** Contractor's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Contractor's control and without the fault or negligence of Grantee, including acts of God, acts of the public enemy, and acts of any government, fires, floods, epidemics and strikes.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS MEMORANDUM OF UNDERSTANDING.

**Skokomish Indian Tribe:**

Date: 5/20/2014

Signature: Leanea Wolfe

Name: Leanea Wolfe

Title: Community Development Director

Legal:

Accounting: Paul 5/19/2014

**Mason Transit Authority:**

Date: 5/20/14

Signature: Brad Patterson

Name: Brad Patterson

Title: General Manager

## Exhibit A: Funding Levels for Transit Services Provided by MTA

The funding provided to MTA by Skokomish Indian Tribe will be as follows:

Beginning April 30, 2014 and continuing for 12 months or until Federal Tribal Transit funds are expended or; the Skokomish Tribe may choose to continue the project through term using other available funding.

**Federal Tribal Transit Funding..... $129,606.00**

# Exhibit B: Current and Projected Mason County Transit Routes in Affected Areas

## Route 8: Shelton – Hoodsport

| Northbound | Weekdays | | Weekends | |
|---|---|---|---|---|
| Civic Center | 8:05 | **2:00** | 6:50 | **5:20** |
| Terrance Heights Northcliff | 8:10 | **2:05** | 6:55 | **5:25** |
| Olympic College | 8:12 | **2:07** | 6:57 | **5:27** |
| Wallace Kneeland | 8:15 | **2:10** | 7:00 | **5:30** |
| Twin Totems | 8:25 | **2:20** | 7:10 | **5:40** |
| Hoodsport | 8:35 | **2:30** | 7:20 | **5:50** |

| Lilliwaup Store and up Canal | Call Request | **Call Request** | Call Request | **Call Request** |
|---|---|---|---|---|
| **Southbound** | | | | |
| Brinnon Store | 9:20 | **3:15** | 8:05 | **6:40** |
| Lilliwaup and down Canal | Call Request | **Call Request** | Call Request | **Call Request** |
| Hoodsport | 9:55 | **3:55** | 8:45 | **7:20** |
| Twin Totems | 10.00 | **4:00** | 8:50 | **7:25** |
| Wallace Kneeland | 10:15 | **4:15** | 9:00 | **7:35** |
| Civic Center | 10:35 | **4:35** | 9:15 | **7:50** |

## Route 2 - Shelton to Belfair via Highway 106

***Monday thru Friday Service - Shelton to Belfair***

| Civic Center | Terrace Heights Northcliff | Olympic College | Wallace Kneeland | Twin Totems | McReavy Rd & SR 106 | Bill Hunter Park |
|---|---|---|---|---|---|---|
| **1** | **2** | **3** | **4** | **5** | **6** | **7** |
| 6:40 AM | 6:45 AM | 6:47 AM | 6:50 AM | 7:03 AM | 7:10 AM | 7:50 AM |
| 10:00 AM | 10:05 AM | 10:07 AM | 10:10 AM | 10:23 AM | 10:30 AM | 11:15 AM |
| **12:40 PM** | **12:45 PM** | **12:47 PM** | **12:50 PM** | **1:03 PM** | **1:10 PM** | **1:50 PM** |

***Monday thru Friday Service - Belfair to Shelton***

| Bill Hunter Park | McReavy Rd & SR 106 | Twin Totems | Wallace Kneeland | Civic Center |
|---|---|---|---|---|
| **7** | **6** | **5** | **4** | **1** |
| 9:15 AM | 9:45 AM | 9:52 AM | 10:05 AM | 10:30 AM |
| 11:30 AM | **12:00 PM** | **12:07 PM** | **12:20 PM** | **12:45 PM** |
| **3:15 PM** | **3:45 PM** | **3:52 PM** | **4:05 PM** | **4:25 PM** |

**Saturday Only Service - Shelton to Belfair**

| | | | | | | |
|---|---|---|---|---|---|---|
| 6:40 AM | 6:45 AM | 6:47 AM | 6:50 AM | 7:03 AM | 7:10 AM | 7:55 AM |
| **12:40 PM** | **12:45 PM** | **12:47 PM** | **12:50 PM** | **1:03 PM** | **1:10 PM** | **1:50 PM** |

**Saturday Only Service - Belfair to Shelton**

| | | | | |
|---|---|---|---|---|
| 9:15 AM | 9:45 AM | 9:52 AM | 10:05 AM | 10:30 AM |
| **3:20 PM** | **3:15 PM** | **3:37 PM** | **4:10 PM** | **4:30 PM** |

*See Route 3 for connections to Bremerton*

## Exhibit C: Federal Fiscal Year 2014Certifications and Assurances for Federal Transit Administration Assistance Programs

## 01. ASSURANCES REQUIRED FOR EACH APPLICANT

Each Applicant for FTA assistance must provide all assurances in this Category "01." Except to the extent that FTA expressly determines otherwise in writing, FTA may not award any Federal assistance until the Applicant provides the following assurances by selecting Category "01." As a sub-recipient to the Applicant, MTA provides assurances that MTA will comply provide with all Certifications and Assurances applicable to a sub-recipient.

### A. Assurance of Authority of the Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable State, local, or Indian tribal law and regulations, and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

### B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes and regulations in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the FTA grant agreement or cooperative agreement, including the FTA Master Agreement that is incorporated by reference and made part of the latest amendment to its grant agreement or cooperative agreement with FTA issued for its project. The Applicant recognizes that Federal laws and regulations may be modified from time to time and those modifications may affect project implementation. The Applicant understands that Presidential executive orders and Federal directives, including Federal policies and program guidance may be issued concerning matters affecting the Applicant or its project. The Applicant agrees that the most recent Federal laws, regulations, and directives will apply to the project, unless FTA issues a written determination otherwise.

**C. Intergovernmental Review Assurance**

Except if the Applicant is an Indian tribal government seeking assistance authorized by APPENDIX A

49 U.S.C. 5311(c)(1), the Applicant assures that each application for Federal assistance it submits to FTA has been submitted or will be submitted for intergovernmental review to the appropriate State and local agencies as determined by the State. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. Department of Transportation (U.S. DOT) regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17. This assurance does not apply to Applicants for Federal assistance under PTA's Tribal Transit Program, 49 U.S.C. 5311(c)(1).

**D. Nondiscrimination Assurance**

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project;

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these provisions;

(3) It will include in each sub-agreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any sub-recipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project;

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits;

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under Title VI of the Civil Rights Act, U.S. DOT implementing regulations, and this assurance; and

(6) It will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.

**E. Assurance of Nondiscrimination on the Basis of Disability**

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as

amended, 29 U.S.C. 794, et seq., and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq., and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any other applicable Federal laws that may be enacted or Federal regulations that may be promulgated.

**F. Suspension and Debarment**

In accordance with the terms of U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180:

(1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals, including its first tier sub-recipients:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction; violation of any Federal or State antitrust statute; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in subparagraph (1) (b) of this certification;

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) The Applicant (Primary Participant) certifies that it and its principals, including its first tier sub-recipients, will treat each lower tier contract or lower tier subcontract under the Project that (a) equals or exceeds $25,000, (b) is for audit services, or (3) requires the consent of a Federal official, as a covered contract for purposes of2 CFR Part 1200 and 2 CFR Part 180, and will otherwise comply with the Federal requirements of 2

CFR Part 1200 and 2 CFR Part 180, and will assure that the each lower tier participant involved in the Project is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or disqualified from participation in this transaction by any Federal department or agency;

(3) The Applicant (Primary Participant) certifies that if, later, it or its principals, including any of its first tier sub-recipients, become aware of any information contradicting the statements of subparagraphs (1)(a) through (d) above, it will promptly provide any necessary information to FTA;

(4) If the Applicant (Primary Participant) or any of its principals, including any of its first tier sub-recipients or lower tier participants, is unable to certify to the statements within paragraphs (1), (2), and (3) above, the Applicant shall indicate so on its Signature Page or a Page attached in FTA's TEAM system providing a written explanation to FTA.

**G. U.S. OMB Assurances**

Consistent with U.S. OMB assurances set forth in SF-424B and SF-4240, the Applicant assures that, with respect to itself or its project, the Applicant:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to assure proper planning, management, and completion of the project described in its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt ofFTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of disability;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq., relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq. relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd through 290dd-2., relating to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 et seq., relating to nondiscrimination in the sale, rental, or financing of housing; and

(i) Any other nondiscrimination statute(s) that may apply to the project;

(6) To the extent applicable, will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 et seq., which, among other things, provide for fair and equitable treatment of persons displaced or persons whose property is acquired as a result of federally assisted programs. These requirements apply to all interests in real property acquired for project purposes and displacement caused by the project regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable State and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 et seq., and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and

Federally Assisted Programs," 49 CFR part 24, and will comply with that Act or has complied with that Act and those implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under State law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for their necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and sub-agreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or sub-agreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 et seq., the Copeland "Anti-Kickback" Act, as amended, at 18 U.S.C. 874, and at 40 U.S.C. 3145, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 et seq., regarding labor standards for federally assisted projects;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) ofthe Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring the Applicant and its sub-recipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) To the extent applicable, will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use oflead-based paint in the construction or rehabilitation of residence structures;

(10) To the extent applicable, will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from FTA;

(11) To the extent required by FTA, will record the Federal interest in the title of real property, and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) To the extent applicable, will comply with FTA provisions concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) To the extent applicable, will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to assure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the State;

(14) To the extent applicable, will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990,42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order No. 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 through 1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 through 7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300fthrough 300j-6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 through 1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, State, or local significance or any land from a historic site of national, State, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and 303(c);

G) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 through 1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; with the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469 through 469c; and with Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501 through 1508 and 7324 through 7326, which limit the political activities of State and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 49 U.S.C. 5307(k)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) To the extent applicable, will comply with the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. 289 et seq., and U.S. DOT regulations, "Protection of Human Subjects," 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance; APPENDIX A

(17) To the extent applicable, will comply with the Animal Welfare Act, as amended, 7 U.S.C. 2131 et seq., and U.S. Department of Agriculture regulations, "Animal Welfare," 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq., U.S. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Revised, and the most recent applicable U.S. OMB A-133 Compliance Supplement provisions for the U.S. DOT; and

(19) To the extent applicable, will comply with all applicable provisions of all other Federal laws or regulations, and follow Federal directives governing the project, except to the extent that FTA has expressly approved otherwise in writing.

## 02. LOBBYING CERTIFICATION

*An Applicant that submits or intends to submit an application to FTA for any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding $100,000 is required to provide the following certification. FTA may not award Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance exceeding $100,000 until the Applicant provides this certification by selecting Category "02."*

A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to U.S. DOT or FTA for a Federal grant, loan (including a line of credit), cooperative agreement, or a commitment that the Federal Government to guarantee or insure a loan exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, sub-agreements, and contracts under grants, loans (including a line of credit), cooperative agreements, loan guarantees, and loan insurance).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing a Federal grant, loan (including a line of credit), cooperative agreement,

loan guarantee, or loan insurance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

## 22. TRIBAL TRANSIT PROGRAM

Each Applicant for Tribal Transit Program assistance must provide all certifications and assurances set forth below. Except to the extent that FTA determines otherwise in writing, FTA may not award any Federal assistance under the Tribal Transit Program until the Applicant provides these certifications and assurances by selecting Category "22."

In accordance with 49 U.S.C. 5311(c)(l) that authorizes the Secretary of Transportation to establish terms and conditions for direct grants to Indian tribal governments, the Applicant certifies and assures as follows:

A. The Applicant assures that:

(1) It has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to carry out each project, including the safety and security aspects ofthat project;

(2) It has or will have satisfactory continuing control over the use of project equipment and facilities;

(3) The project equipment and facilities will be adequately maintained; and

(4) Its project will achieve maximum feasible coordination with transportation service assisted by other Federal sources;

B. In accordance with 49 CFR 18.36(g) (3)(ii), the Applicant certifies that its procurement system will comply with the requirements of 49 CFR 18.36, or will inform FTA promptly that its procurement system does not comply with 49 CFR 18.36;

C. To the extent applicable to the Applicant or its Project, the Applicant certifies that it will comply with the certifications, assurances, and agreements in Category 08 (Bus Testing), Category 09 (Charter Bus Agreement), and Category 10 (School Transportation Agreement), Category 11 (Demand Responsive Service), Category 12 (Alcohol Misuse and Prohibited Drug Use), and Category 14 (National Intelligent Transportation Systems Architecture and Standards) of this document; and

D. If its application exceeds $100,000, the Applicant agrees to comply with the certification in Category 02 (Lobbying) of this document.